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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)	No. CR 07-0337 MHP
)	
Plaintiff,)	
)	
v.)	JOINT MOTION AND REQUEST TO
)	CONVERT SENTENCING HEARING TO
JACQUELINE FROEHLICH-)	STATUS HEARING AND [PROPOSED]
L'HEUREAUX,)	ORDER
)	
Defendant.)	

Pursuant to Criminal Local Rule 32-2, the United States and the defendant Jacqueline Froehlich-L'Heureaux jointly request that the sentencing hearing presently set for May 23, 2011, be converted to a status hearing.

The defendant Jacqueline Froehlich-L'Heureaux previously pled guilty pursuant to a plea agreement in which she agreed to cooperate with the United States in its investigation and prosecution of other individuals. It is now anticipated that Ms. Froehlich-L'Heureaux will testify at the trial of the defendant David Nosal in United States v. David Nosal, CR 08-0237 MHP.

The Nosal case is currently on appeal before the Ninth Circuit. Regardless of the Ninth Circuit's disposition of the United States' appeal in the Nosal matter, at least some charges alleged in the Nosal Indictment will proceed to trial, and Ms. Froehlich-L'Heureaux will testify at that trial.

JOINT MTN. & [PROPOSED] ORDER
CR 07-0337 MHP

1 Because Ms. Froehlich-L'Heureaux's cooperation with the government's investigation
 2 and prosecution of other individuals is not yet complete, the parties jointly request that the Court
 3 convert the scheduled sentencing date of May 23, 2011, to a status hearing. The specific bases of
 4 the parties' request are set out in more detail below.

5 **I. Delaying Sentencing In This Matter Will Benefit The United States And Will**
 6 **Potentially Benefit The Defendant.**

7 A defendant who requests a continuance of her sentencing hearing should be able to
 8 demonstrate that the government either desires or can benefit from her cooperation. *Cf. United*
 9 *States v. Urben-Potratz*, 470 F.3d 740, 744 (8th Cir. 2006) (affirming denial of defendant's
 10 motion for continuance where defendant's additional cooperation would have required DEA to
 11 arrange an operation and approve defendant's participation in it and DEA "had already denied
 12 one such request").

13 In the present matter, Ms. Froehlich-L'Heureaux is cooperating with the government, and
 14 has been doing so since 2007. In the past, Ms. Froehlich-L'Heureaux has participated in
 15 meetings with government investigators regarding the facts and circumstances of the conspiracy
 16 charged in the Nosal case. It is anticipated that she will participate in additional meetings once
 17 the Nosal matter is set for trial. Ms. Froehlich-L'Heureaux's further cooperation in this case
 18 does not require special arrangements, but rather only the defendant's testimony in the trial of her
 19 co-conspirator Nosal.

20 In addition, Ms. Froehlich-L'Heureaux's active cooperation, through testimony against
 21 her co-conspirator Nosal, may significantly alter the United States' recommendation (if any) as to
 22 an appropriate sentencing reduction by enhancing the value of the defendant's cooperation "in
 23 the investigation or prosecution of another person who has committed an offense." United States
 24 Sentencing Commission, Guidelines Manual § 5K1.1, p.s., comment. (n.3).

25 Finally, because Ms. Froehlich-L'Heureaux will be required to testify at trial, her
 26 cooperation with the government's investigation is not yet complete. Pursuant to the terms of her
 27 plea agreement, Ms. Froehlich-L'Heureaux has agreed to request continuances of her sentencing
 28 date until her cooperation is completed. *See* Plea Agrm., ¶ 9.e. Indeed, the parties' agreement

1 anticipated that sentencing in this case would not proceed until Ms. Froehlich-L'Heureaux's
2 cooperation was complete.

3 **II. Neither The Defendant Nor the Government Will Suffer Inconvenience.**

4 Neither the government nor the defendant will suffer inconvenience by converting the
5 sentencing hearing to a status hearing. While the parties acknowledge that inconvenience to the
6 Court or witnesses may be an important factor in a consideration of whether to continue a trial, it
7 is less important in the case of a short hearing where no witnesses are called and where re-
8 calendaring may be accomplished easily. *United States v. Flynt*, 756 F.2d 1352, 1360 (9th Cir.
9 1985) (contempt hearing); *see also United States v. Rivera-Guerrero*, 426 F.3d 1130, 1141 (9th
10 Cir. 2005) (hearing regarding anti-psychotic drug administration).

11 In fact, courts routinely grant requests to continue sentencing hearings for the purpose of
12 cooperation. *See United States v. Ressam*, 629 F.3d 793, 811 & n.2 (9th Cir. 2010) (referencing
13 multiple sentencing continuances to allow for cooperation with the government, including a
14 nine-month continuance "to allow Ressam 'the opportunity to fulfill the terms of his promised
15 cooperation'"); *United States v. Myers*, 993 F.2d 713, 714 (9th Cir. 1993) (referencing "many"
16 continuances of defendants' sentencing hearing for purpose of substantial assistance).

17 In this case, a sentencing continuance should not present substantial inconvenience to the
18 Court or to third parties and will not inconvenience the government or the defendant, and its
19 timing can easily be assessed based on the progression of the government's case against David
20 Nosal. Converting the sentencing hearing to a status hearing will also provide the Probation
21 Office with additional time to complete the presentence report in this (and related) cases, and will
22 allow the parties to maintain their focus on Ms. Froehlich-L'Heureaux's continuing cooperation.

23 **III. Conclusion.**

24 For all of these reasons, the parties jointly request that this Court convert the sentencing

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1 hearing presently set for May 23, 2011, to a status hearing.

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3 Respectfully submitted,

4 Dated: April 26, 2011

MELINDA HAAG
United States Attorney

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6
7 /s/
KYLE F. WALDINGER
Assistant United States Attorney

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9
10 Dated: April 26, 2011

Leland B. Altschuler
/s/
LELAND ALTSCHULER
Attorney for defendant Jacqueline Froehlich-
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12
13
14 ~~PROPOSED~~ ORDER

15 GOOD CAUSE APPEARING,

16 IT IS ORDERED that the sentencing hearing presently set for May 23, 2011, be
17 converted to a status hearing.

18 Dated this 28th day April, 2011

